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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, MARIA NGUYEN,
WILLIAM BYATT, JEREMY DAVIS, and
CHRISTOPHER CASTILLO, individually
and on behalf of all similarly situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**ADMINISTRATIVE MOTION TO SEAL
JOINT LETTER BRIEF RE: LOG
PRESERVATION**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the parties’ Joint Letter Brief Regarding Log Preservation (“Joint Letter Brief”), which contain non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This Administrative Motion pertains for the following information contained in the Joint Letter Brief:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Letter Brief Regarding Log Preservation	Portions Highlighted in Yellow at 3:17, 3:20, 3:21, 3:22, 4:24-26, 4:27	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales,

1 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 2 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 3 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 4 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 5 “good cause” standard) (Van Keulen, J.).

6 A discovery letter brief is non-dispositive, and thus the good cause standard applies. *See e.g.*
 7 *Pieterston v. Wells Fargo Bank, N.A.*, 2018 WL 10362631, at *2 (N.D. Cal. Nov. 8, 2018) (“The
 8 parties have filed two separate motions to seal portions of the discovery letter briefs that are pending
 9 before the Court. Because the sealing requests were made in conjunction with a non-dispositive
 10 discovery motion, a showing under the good cause standard will suffice.”). Although the materials
 11 that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need
 12 only consider whether these materials meet the lower “good cause” standard.

13 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

14 Courts have repeatedly found it appropriate to seal documents that contain “business
 15 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435
 16 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 17 “contain[] confidential information about the operation of [the party’s] products and that public
 18 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 19 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 20 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 21 standard. *See e.g. Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 22 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 23 standard where that information could be used to the company’s competitive disadvantage”) (citation
 24 omitted).

25 Here the Joint Letter Brief comprises confidential information regarding highly sensitive
 26 features of Google’s operations and consumer data. Specifically, this information provides details
 27 related to the various types of data logs maintained by Google, the size of those logs, which logs are
 28 linked to a user’s Google Account, and the cost in money and man-hours for suspending retention

1 periods for those logs. Such information reveals Google’s internal strategies, system designs, business
2 practices, and system capacities for operating and maintaining many of its important services while
3 complying with legal and privacy obligations.

4 Public disclosure of the above-listed information would harm Google’s competitive standing it
5 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
6 Google’s proprietary systems, strategies, designs, and system capacities to Google’s
7 competitors. That alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc.*
8 *v. Google Inc.*, No. 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting
9 Google’s motion to seal certain sensitive business information related to Google’s processes and
10 policies to ensure the integrity and security of a different advertising system); *Huawei Techs., Co. v.*
11 *Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing
12 confidential sales data because “disclosure would harm their competitive standing by giving
13 competitors insight they do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8
14 (W.D. Wash. May 8, 2013) (granting motion to seal as to “document retention policies and internal
15 research results that disclose statistical coding that is not publically available”).

16 Moreover, if publicly disclosed, malicious actors may use such information to seek to
17 compromise Google’s data log systems. Google would be placed at an increased risk of cyber security
18 threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013)
19 (sealing “material concern[ing] how users’ interactions with the Gmail system affects how messages
20 are transmitted” because if made public, it “could lead to a breach in the security of the Gmail
21 system”). The security threat is an additional reason for this Court to seal the identified information.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court should seal the identified portions of the Joint Letter
24 Brief.

1 DATED: March 23, 2021

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